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April 6, 2023

The Honorable Jesse M. Furman
United States District Judge for the Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, Room 2202
New York, NY 10007

Re: *Golden Unicorn Enterprises, Inc., et al. v. Audible, Inc.*, 1:21-cv-7059-JMF

Dear Judge Furman:

Pursuant to the Federal Rule of Civil Procedure 6(b)(1)(B), Local Rule 56.1(b), and Section 23.6 of the Southern District's ECF Filing Guide, Plaintiffs Golden Unicorn Enterprises, Inc. and Big Dog Books, LLC respectfully ask Your Honor to deem their Counterstatement of Undisputed Material Facts ("PSUMF") to have been timely filed.

Plaintiffs' Memorandum of Law in Opposition to Audible's Motion for Summary Judgment was due to be filed on April 5, 2023, along with the PSUMF and supporting exhibits. *See* ECF Nos. 109, 159.

Plaintiffs successfully filed their Memorandum on April 5, at approximately 11:04 p.m., but technical errors in one or more of the PDF exhibit files to the PSUMF prevented successful filing by the midnight deadline. Unable to resolve the filing issues immediately, Plaintiffs shared the PSUMF and exhibits with the Court and Counsel for Audible just before midnight. Plaintiffs then filed the PSUMF without exhibits several minutes after midnight. *See* ECF No. 248. After resolving the technical errors, Plaintiffs were able to file the PSUMF with all exhibits at 2:20 p.m. on April 6.

A court may extend a deadline after it has passed on a showing of "excusable neglect." Fed. R. Civ. P. 6(b)(1)(B). Courts have wide discretion to grant an extension under this "non-rigorous standard." *Alexander v. Saul*, 5 F.4th 139, 154 (2d Cir. 2021). A court considers "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was in the reasonable control of the movant; and (4) whether the movant acted in good faith." *Katalyst Sec., LLC v. Marker Therapeutics, Inc.*, No. 21-CV-08005-LTS, 2023 WL 22610, at *2 (S.D.N.Y. Jan. 3, 2023) (internal quotes omitted).

Even if Plaintiffs' late filing constituted neglect, Plaintiffs have shown that it was excusable. Plaintiffs have demonstrated good faith and lack of prejudice by sending the PSUMF and exhibits to Audible to meet the Court's deadline, and then working expediently to correct the filing of the documents into the record. The short delay in the filing will not affect these proceedings because the Court awaits Audible's Reply Memorandum in support of its motion. The reason for the delay was not entirely in Plaintiffs' control.

Plaintiffs have consulted with Audible regarding this letter-motion, and Audible responded that it has no objection.

For these reasons, Plaintiffs respectfully ask that the Court deem the PSUMF to have been timely filed.

Respectfully Submitted,

/s/ Gary W. Jackson

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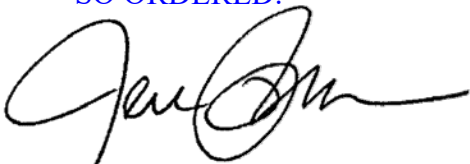
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Application GRANTED. The Clerk of Court is directed to terminate ECF No. 250.

SO ORDERED.



April 10, 2023